



Merchant & Gould P.C.  
P.O. Box 2903  
Minneapolis, MN 55402-0903

In re Application of	:	
DuToit et al.	:	
Application No.: 09/979,586	:	DECISION
PCT No.: PCT/IB00/00739	:	
Int. Filing Date: 22 May 2000	:	UNDER
Priority Date: 20 May 1999	:	
Attorney Docket No.: 8436.88USWO	:	37 CFR 1.497(d)
For: Variable Phase Shifter	:	

This is a decision on the papers filed on 07 June 2002, which are being treated under 37 CFR 1.497(d).

### **BACKGROUND**

This international application was filed on 22 May 2000 and claimed a priority date of 20 May 1999. The International Bureau transmitted a copy of the published international application to the USPTO on 11 January 2001. A Demand electing the United States was filed prior to the elapse of 19 months from the priority date. Consequently, the thirty period for payment of the basic national fee in the United States expired as of midnight on 20 November 2001.

On 03 November 2000, applicants filed a notice withdrawing the international application. On the same date, the International Bureau issued a Form PCT/IB/307 notifying applicant that the notice withdrawing the application had been received and was effective "except as to any designated State in which national processing or examination has already started."

On 20 November 2001, applicants filed *inter alia* the basic national fee.

On 16 January 2002, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants, requiring the submission of an executed oath or declaration of the inventors and a surcharge under 37 CFR 1.492(e).

On 14 March 2002, applicants filed a response, including a declaration and a surcharge under 37 CFR 1.492(e).

On 05 April 2002, a Notification Of Defective Response (Form PCT/DO/EO/916) was mailed to applicants, requiring the submission of an executed oath or declaration and indicating that "There is an inventor added to the declaration that is not identified on any documents associated with this Application."

On 08 May 2002, applicants filed a declaration.

On 07 June 2002, applicants filed the instant papers under 37 CFR 1.497(d).

**DISCUSSION**

Review of the record reveals that international application PCT/IB00/00739 was withdrawn by a notice filed on 03 November 2000, which was before national processing or examination began in the United States. 35 U.S.C. 366 provides that


Subject to section 367 of this part, if an international application designating the United States is withdrawn or considered withdrawn, either generally or as to the United States, under the conditions of the treaty and the Regulations, before the applicant has complied with the applicable requirements provided by section 371(c) of this part, the designation of the United States shall have no effect after the date of withdrawal, and shall be considered as not having been made, unless a claim for the benefit of a prior filing date under section 365(c) of this part was made in a national application, or an international application designating the United States, filed before the date of such withdrawal. However, such withdrawn international application may serve as the basis for a claim of priority under section 365(a) and (b) of this part, if it designated a country other than the United States.


Review of the record reveals that applicant had not complied with the requirements of 35 U.S.C. 371(c) prior to the date the international application was withdrawn, 03 November 2000 (specifically, applicants had not paid the basic national fee in the United States, filed a copy of the international application with the USPTO, or filed an oath or declaration of the inventors with the USPTO, prior to 03 November 2000). Review of the record further reveals no record of a claim of benefit under 35 U.S.C. 365(c) made in a national or international application designating the United States, prior to 03 November 2000. As such, pursuant to 35 U.S.C. 366, the designation of the United States has no effect after 03 November 2000 and is considered as not having been made. The instant national stage application is **ABANDONED** with respect to the United States. As such, it would not be appropriate to consider the papers filed on 07 June 2002 regarding the addition of a joint inventor.

**CONCLUSION**

The papers filed under 37 CFR 1.497 (d) are not accepted.

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, DC 20231, and address the contents of the letter to the attention of the PCT Legal Office.

  
Leonard Smith  
PCT Legal Examiner  
PCT Legal Office

  
George M. Dombroske  
PCT Legal Examiner  
PCT Legal Office  
Tel: (703) 308-6721  
Fax: (703) 308-6459